

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN NOAKES,

Plaintiff,

v.

CASE WESTERN RESERVE UNIVERSITY,

Defendant.

) Case No. 1:21-cv-01776

) The Honorable Judge Pamela A. Barker

) **DEFENDANT CASE WESTERN**
) **RESERVE UNIVERSITY'S**
) **UNOPPOSED MOTION FOR LEAVE**
) **TO FILE ANSWER TO PLAINTIFF'S**
) **AMENDED COMPLAINT**
) **INSTANTER**
)

Defendant Case Western Reserve University (“CWRU” or “Defendant” or the “University”), by and through the undersigned counsel, respectfully moves this Court for leave to file its Answer to Plaintiff’s Amended Complaint *instante* (a copy of Defendant’s proposed answer is attached as Exhibit A). Prior to filing this Motion, the undersigned counsel discussed this Motion with Plaintiff’s counsel, and Plaintiff does not object to this Motion.

It is well-established in the Sixth Circuit that there is a “strong preference for trials on the merits in federal courts.” *See, e.g., Shepard Claims Service v. William Darrah & Associates*, 796 F.2d 190, 193 (1986). Rule 6(b) of the Federal Rules of Civil Procedure permits an enlargement of time allowed for filing an answer upon showing of excusable neglect if the request for an extension comes after the expiration of the specified time period. Fed.R.Civ.P. 6(b). The U.S. Supreme Court ruled that a court is “permitted, where appropriate, to accept late filings caused by inadvertence, mistakes, or carelessness,” even when an adequate excuse is not tendered. *Pioneer Inv. Services Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380 (1993). Courts freely grant leave to file answers. *See, e.g., Tolliver v. Liberty Mutual Fire Ins. Co.*, S.D. Ohio No. 2:06-cv-00904, 2008 WL 545018, *1 (S.D. Ohio Feb. 25, 2008) (granting defendant leave to file an answer

more than two months after it was due where defense counsel “inadvertently failed to calendar the answer date” and finding “excusable neglect”).

On September 15, 2021, Plaintiff filed a 42-page, 134-paragraph Complaint (ECF 1). On October 27, 2021, CWRU filed its Answer to the Complaint (ECF 26). Over the past year, Defendant has consistently and vigorously defended this action, including, among other things, the filing of multiple briefings relating to Plaintiff’s Motion for Temporary Restraining Order, Motion for Preliminary Injunction, and Motion for Expedited Discovery, the completion of expedited discovery, and engaging in efforts to resolve the matter following CWRU’s conclusion of its internal proceedings related to the Tumblr matter referenced in the pleadings. On October 6, 2022, Plaintiff filed a 70-page, 192-paragraph Amended Complaint adding new factual allegations and claims. Per this Court’s October 20, 2022 Order, Defendant’s answer to the Amended Complaint was due November 3, 2022. Due to an internal docketing error, the undersigned counsel respectfully requests that this Court grant Defendant a one-day extension of time to file its answer to the Amended Complaint, grant this Motion for Leave to File Answer to Plaintiff’s Amended Complaint *Instantly*, and deem the attached Answer as filed in this case. Defendant’s Answer will not prejudice Plaintiff or unduly delay the proceedings as the parties only recently exhausted efforts to resolve the matter and resumed litigation of this case, including the recent filing of the Amended Complaint.

Respectfully submitted,

/s/ Amanda T. Quan

John Gerak (0075431)

Amanda T. Quan (0086623)

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Key Tower

127 Public Square, Suite 4100

Cleveland, OH 44114

216-241-6100

216-357-4733 (FAX)

Email: john.gerak@ogletree.com

amanda.quan@ogletree.com

*Attorneys for Defendant Case Western Reserve
University*

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2022, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system, including the following:

Joshua Adam Engel
Anne Tamashasky
Engel and Martin, LLC
4660 Duke Dr., Suite 101
Mason, OH 45040
engel@engelandmartin.com

Attorneys for Plaintiff

/s/ Amanda T. Quan
*One of the Attorneys for Defendant Case Western
Reserve University*